

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

LAWRENCE COOK

Defendant.

**8:07CR339**

**ORDER**

This matter is before the court on the defendant's motions to vacate under [28 U.S.C. § 2255](#), [Filing Nos. 197](#) and [199](#). Under the Rules Governing Section 2255 Proceedings for the United States District Courts ("2255 Rules"), the court must perform an initial review of the defendant's § 2255 motion. See [28 U.S.C. § 2255](#), Rule 4(b). The rules provide that unless "it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court," the court must order the United States Attorney to respond to the motion. *Id.*

The defendant was found guilty of a charge of convicted felon in possession of a firearm and was sentenced to a sentence of 17 years. His sentence was affirmed on appeal. In his § 2255 motion, the defendant alleges that the armed career criminal act is unconstitutional. The defendant filed an initial § 2255 motion, and then he filed a successive motion. The Eighth Circuit ruled that the defendant could file his successive motion. [Filing No. 200](#). Accordingly, the Court will review the second § 2255 as indicated by the Eighth Circuit.

On initial review, the court finds that “it does not plainly appear that the defendant is entitled to no relief,” and that the government should be required to answer. On receipt of the government’s answer, the court will determine (a) whether to order the parties to submit briefs on the merits, so that the defendant’s claims may be resolved on the basis of the record and briefs, or (b) whether an evidentiary hearing is required. See Rule 8(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts.

THEREFORE, IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is not appropriate.
2. The United States shall file an answer to the defendant’s § 2255 motion within 21 days of the date of this order.

Dated this 23rd day of January, 2017.

BY THE COURT:

s/ Joseph F. Bataillon  
Senior United States District Judge